

URGENT
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ICC MEMO TO GOVERNMENTS AND CENTRAL BANKS ON ESSENTIAL STEPS TO SAFEGUARD TRADE FINANCE OPERATIONS

SUMMARY

The International Chamber of Commerce (**ICC**) is increasingly concerned about the impact of the novel coronavirus (**COVID-19**) pandemic on the functioning of the global trade finance market.

COVID-19 induced dislocation in this market may have significant negative implications for essential global trade flows and, moreover, the viability of many micro-, small- and medium-sized enterprises (**MSMEs**).

As a consequence of necessary public-health interventions to tackle the pandemic, banks are facing increased difficulties processing trade finance transactions. These operations typically require significant levels of in-person staffing to review hard-copy paper documentation, which is required as a matter of national law in many jurisdictions.

While ICC and banks are taking rapid—and unprecedented—steps to limit potential disruption to the processing of trade transactions, **only effective government intervention to enable an immediate transition to paperless trading will fully mitigate the potential implications of COVID-19 related workplace restrictions on the financing of trade.**

In this context—and with a view to safeguarding global trade flows—**ICC calls on all governments to take emergency measures to immediately void all existing legal prohibitions on the use of electronic trade documentation.**

International legal standards can be readily adopted in national laws to provide legal clarity for banks to accept e-documents in order to expedite the financing of trade transactions and the release of goods through this unprecedented crisis.

1. CONTEXT

- 1.1.** Bank-intermediated trade finance performs two vital roles in the global economy: providing working capital tied to and in support of international trade transactions; and/or providing means to reduce payment risks.
- 1.2.** The Bank for International Settlements estimates that trade finance directly supports about one-third of global trade—with key instruments such as letters-of-credit playing an outsized role in enabling trade in many developing economies and essential commodity markets.
- 1.3.** Trade finance transactions rely almost exclusively on hard-copy paper documentation to process payments and, ultimately, clear the release of goods to buyers. This is because, in many jurisdictions, electronic trade documents are either prohibited or their legal status is unclear.

- 1.4. In the context of COVID-19 this reliance on hard-copy documents presents two fundamental challenges to the effective financing of trade:
- (i) due to the unprecedented—yet necessary—public health measures taken in response to the pandemic (such as “social distancing” or teleworking), banks face growing difficulties processing paper-based transactions which, by their very nature, require significant levels of in-person “back office” staffing; and
 - (ii) the transmission of trade documentation is being severely disrupted as postal services become stretched, and in some cases, suspended.
- 1.5. ICC is concerned that this operational disruption may have significant implications for global trade flows—potentially disrupting supply chains for essential goods to tackle COVID-19 such as medical equipment and staple foods.

2. MARKET RESPONSE TO COVID-19

- 2.1. ICC has issued emergency guidance on the interpretation of its universally used rules to support banks in processing key trade transactions. The guidance provides new flexibilities in the application of ICC rules in response to COVID-19—such as amending deadlines for document checking and providing for agreements to postpone payment/shipment etc. Many banks are also seeking to rapidly implement operational changes to minimise potential financing and supply chain disruptions while mitigating COVID-19 related workplace risks.
- 2.2. We recognise, however, that these institutional and market responses will be insufficient on their own to ensure the effective functioning of the trade finance market. Simply put, in the exceptional circumstances created by COVID-19 the current requirement for banks to process paper-based transactions is increasingly untenable.

3. EMERGENCY INTERVENTIONS FROM GOVERNMENTS NEEDED TO REMOVE RELIANCE ON PAPER-BASED TRADE DOCUMENTATION

- 3.1. In this context, it is imperative that all governments take immediate steps to enable banks to process trade finance transactions utilising electronic trade documents—removing the need for any documentation to be presented in hard-copy.
- 3.2. On this basis, ICC calls on all governments to take the following actions without delay:

— **As a temporary measure, void any legal requirements for trade documentation to be in hard copy.**

The specifics of voiding legislative requirements will depend on the constitutional arrangements of each country. Nevertheless, ICC calls on all countries to take all necessary legislative or executive actions, according to national circumstances, to remove requirements for key trade documents (e.g. bills of lading, bills of exchange, promissory notes, commercial invoices) to be presented in paper format.

We note that some governments have already taken steps of this nature in response to the COVID-19 pandemic and encourage all governments to follow this lead without delay.

— **Adoption of the UNCITRAL Model Law on Electronic Transferrable Records.**

As a subsequent step, we encourage all governments to rapidly adopt legal frameworks to clarify the functional and legal equivalence of electronic and paper-based documents.

To this end, we encourage governments to consider implementing the 2017 United Nations Commission on International Trade Law Model Law on Electronic Transferable

Records (MLETR)—which provides the clarity necessary for widespread adoption of digitalised trade and trade finance instruments.

Important provisions of the model law include:

- > **Article 7** an electronic transferable record “shall not be denied legal effect, validity or enforceability on the sole ground that it is in electronic form”;
- > **Articles 8-11** on the functional equivalence of electronic and manual records; and
- > **Article 12** on general reliability standards for verifying signatures, integrity and other aspects of electronic records. Helpfully, this general reliability standard allows for the consideration of “any applicable industry standard”.

Despite extensive negotiation and unanimous adoption of the instrument by the United Nations General Assembly—and associated discussions in the World Trade Organization—adoption of the MLETR has been low. Now is the time for its widespread adoption of to ensure trade finance can be conducted in a paperless manner with a workforce working-from-home.

- 3.3.** Every day matters in taking steps to secure the functioning of the global trading system in the face of the unprecedented challenges posed by COVID-19. We respectfully call on all governments to take immediate measures in line with the above and stand ready to provide any further support that may be useful to governments and regulators in the context of the current crisis.